MONTANA LEGISLATIVE HISTORY

Chapter 344 19 2003

Bill H 54 S _____ Original bill & history ___C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1/13	___C	Hearing Date(s)	2/03	___C
	1/17	___C		3/24	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Montana Legislative Branch

Montana Legislature

Detailed Bill Information

2003 Session

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Bill Draft Number: LC0812 Current Bill Text

Bill Type - Number: HB 54

Short Title: Add electronic communication as means of committing certain crimes

Primary Sponsor: Brad Newman

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 46

Print Friendly

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/16/2003			
(H) Signed by Governor	04/15/2003			
(H) Transmitted to Governor	04/11/2003			
(S) Signed by President	04/10/2003			
(H) Signed by Speaker	04/10/2003			
(H) Returned from Enrolling	04/09/2003			
(C) Sent to Printing	04/09/2003			
(H) Sent to Enrolling	04/08/2003			
(H) 3rd Reading Passed as Amended by Senate	04/08/2003	99	1	
(H) Scheduled for 3rd Reading	04/08/2003			
(H) 2nd Reading Senate Amendments Concurred	04/07/2003	98	1	
(H) Scheduled for 2nd Reading	04/07/2003			
(S) Returned to House with Amendments	03/28/2003			
(S) 3rd Reading Concurred	03/28/2003	49	0	
(S) Scheduled for 3rd Reading	03/28/2003			
(S) 2nd Reading Concurred on Voice Vote	03/27/2003	49	0	
(S) Scheduled for 2nd Reading	03/27/2003			
(C) Sent to Printing	03/24/2003			
(S) Committee Report--Bill Concurred as Amended	03/24/2003			(S) Judiciary

(S) Committee Executive Action--Bill Concurred as Amended	03/24/2003	6	0	(S) Judiciary
(S) Hearing	02/03/2003			(S) Judiciary
(S) Referred to Committee	01/25/2003			(S) Judiciary
(S) First Reading	01/25/2003			
(H) Transmitted to Senate	01/24/2003			
(H) 3rd Reading Passed	01/24/2003	96	3	
(H) Scheduled for 3rd Reading	01/24/2003			
(H) 2nd Reading Passed	01/23/2003	93	5	
(H) Scheduled for 2nd Reading	01/23/2003			
(C) Sent to Printing	01/20/2003			
(H) Committee Report--Bill Passed as Amended	01/20/2003			(H) Judiciary
(H) Committee Executive Action--Bill Passed as Amended	01/17/2003	14	0	(H) Judiciary
(H) Hearing	01/13/2003			(H) Judiciary
(H) First Reading	01/06/2003			
(H) Referred to Committee	12/16/2002			(H) Judiciary
(C) Introduced Bill Text Available Electronically	12/09/2002			
(H) Introduced	12/09/2002			
(C) Pre-Introduction Letter Sent	12/05/2002			
(C) Draft in Assembly/Executive Director Review	12/04/2002			
(C) Draft in Final Drafter Review	12/03/2002			
(C) Bill Draft Text Available Electronically	12/02/2002			
(C) Draft in Input/Proofing	12/02/2002			
(C) Draft to Drafter - Edit Review [SAB]	12/02/2002			
(C) Draft in Edit	12/02/2002			
(C) Draft in Legal Review	12/02/2002			
(C) Draft to Requester for Review	11/21/2002			
(C) Draft Request Received	11/18/2002			

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Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi

Requester	Newman	Brad	
Drafter	MacMaster	John	
Primary Sponsor	Newman	Brad	

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Crimes		Simple	CR

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: N
Session Law Ch. Number: 344
DEADLINE
Category: General Bills
Transmittal Date: 02/28/2003
Return (with 2nd house amendments) Date: 04/05/2003

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Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-03	

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

11/18/2003 11:39 AM Mountain Time
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HOUSE BILL NO. 54

INTRODUCED BY B. NEWMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIMINAL LAWS RELATING TO STALKING, CHILD PORNOGRAPHY, DEFAMATION, AND PRIVACY IN COMMUNICATIONS TO INCLUDE ACTS INVOLVING THE USE OF COMPUTERS, VIDEORECORDERS, FAX MACHINES, AND OTHER ELECTRONIC DEVICES; CHANGING THE VENUE FOR SOME OF THOSE CRIMES; AND AMENDING SECTIONS 45-5-220, 45-5-625, 45-8-212, 45-8-213, AND 46-3-112, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-220, MCA, is amended to read:

"45-5-220. Stalking -- exemption -- penalty. (1) A person commits ~~the offense of stalking if the~~ person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by ~~phone~~ telephone, by mail, by any type of electronic communication, including but not limited to a computer, videorecorder, or fax machine, or by other action, device, or method.

(2) This section does not apply to a constitutionally protected activity.

(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed $1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed $10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person."

Section 2. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of a computer, videorecorder, fax machine, or other electronic device, in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of a computer, videorecorder, fax machine, or other electronic device, in which children are engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of a computer, videorecorder, fax machine, or other electronic device, in which children are engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not

more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections."

Section 3. Section 45-8-212, MCA, is amended to read:

"45-8-212. Criminal defamation. (1) Defamatory matter is anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to the person's or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means, including by telephone or by a computer, videorecorder, fax machine, or other electronic device, communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further the interest or duty.

(4) A person may not be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty or nolo contendere."

Section 4. Section 45-8-213, MCA, is amended to read:

"45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by ~~telephone or electronic mail~~ telephone or by a computer, videorecorder, fax machine, or other electronic device and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses a telephone or ~~electronic mail~~ a computer, videorecorder, fax machine, or other electronic device to attempt to extort money or any other thing of value from a person or to disturb by repeated ~~telephone calls or electronic mailings~~ communications the peace, quiet, or right of privacy of a person at the place where the ~~telephone call or calls or electronic mailings~~ communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings; or

(iii) persons given warning of the transcription or recording.

(d) by means of any electronic or mechanical device, machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read a message or learn the contents of a message while it is being sent over a telegraph line, ~~or~~ by telephone, or by computer, videorecorder, fax machine, or other electronic ~~mail~~ device;

(ii) learns or attempts to learn the contents of a message while it is in a telegraph office or is being received at or sent from a telegraph office; or

(iii) uses, attempts to use, or communicates to others any information obtained as provided in this subsection (1)(d);

(e) discloses the contents of ~~a telegraphic message, electronic mail,~~ or any part of a telegraphic message or a message sent by computer, videorecorder, fax machine, or other electronic ~~mail~~ device and addressed to another person without the permission of the person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to be read any sealed letter or a communication sent by computer, videorecorder, fax machine, or other electronic ~~mail~~ device and not addressed to the person opening the letter or reading the electronic ~~mail~~ communication without being authorized to do so by either the writer of the letter, the sender of the electronic ~~mail~~ communication, or the person to whom the letter or electronic ~~mail~~ communication is addressed or, without the like authority, publishes any of the contents of the letter or electronic ~~mail~~ communication knowing the letter or electronic ~~mail~~ communication to have been unlawfully opened.

(2) Subsection (1) does not apply to an employer or a representative of an employer who opens or reads, causes to be opened or read, or further publishes an electronic ~~mail~~ communication or other message that either originates at or is received by a computer or computer system, videorecorder, fax machine, or other electronic device that is owned, leased, or operated by or for the employer.

(3) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts a telephonic or cellular telephone voice or data communication. This subsection does not apply to elected or appointed public officials or employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(4) (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed $1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $10,000, or both."

Section 5. Section 46-3-112, MCA, is amended to read:

"46-3-112. Requisite act in multiple counties. (1) Except as provided in 46-3-110(2), if two or more acts are requisite to the commission of an offense or if two or more acts are committed in furtherance of a

common scheme, the charge may be filed in any county in which any of the acts or offenses occurred.

(2) Except as provided in 46-3-110(2), if an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued.

(3) (a) If an element of an offense under 45-5-220, 45-5-625, 45-8-212, or 45-8-213, involves the sending, publication, distribution, advertisement, interception, opening, reading, or recording of a communication or visual or print medium, the charge may be filed in:

(i) the county in or from which the communication was sent, published, distributed, advertised, intercepted, opened, read, or recorded; or

(ii) in the county in which the communication or visual or print medium was received or to which it was sent.

(b) For the purposes of subsection (3)(a), a communication may be sent by:

(i) mail;

(ii) telephone;

(iii) telegraph;

(iv) computer, videorecorder, fax machine, or other electronic device;

(v) mechanical device; or

(vi) other device."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 13, 2003 at 8 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 54, 1/13/2003; HB 61, 1/13/2003; HB 70, 1/13/2003
Executive Action: HB 61; HB 70; HB 48; HB 84; HB 29

pretrial conference or otherwise comply with the court's directive shall constitute a waiver of the right to a trial.

{Tape: 1; Side: A; Approx. Time Counter: 122 - 141}

REP. LANGE asked Mr. Connor about the time frame. **Mr. Connor** stated he intentionally did not put in a time frame feeling it would be best to let the defendant and judge work it out.

Closing by Sponsor:

REP. PARKER closed on HB 70, stating that he would be open to working with Mr. Connor to amend the language.

HEARING ON HB 54

Sponsor: **REP. BRAD NEWMAN, HD 38, Butte**

Opening Statement by Sponsor:

REP. NEWMAN opened on HB 54 stating this bill would revise the criminal laws related to stalking, child pornography, defamation, and privacy in communication. He explained it would involve the use of computers, video recorders, fax machines, and other electronic devices.

Proponents' Testimony:

Beth Sachary, Montana Coalition Against Domestic and Sexual Violence, supported HB 54. She stated this bill would provide an important tool for the prosecution. She read from a letter from Deputy County Attorney, Suzy Boylan-Moore, which stated, "To leave the statutes as they are would ignore the important technological advances that have enabled criminal offenders to find new and more frightening ways to commit their crimes."

EXHIBIT(juh06a01)
EXHIBIT(juh06a02)

{Tape: 1; Side: A; Approx. Time Counter: 218 - 248}

Allie Bovingdon, Assistant Attorney General (AAG), Department of Justice, supported HB 54, stating this bill would bring criminal offenses, with the element of communication or transmittal of information, into alignment with the methods of communication that exist today.

Jim Smith, Montana Sheriff's and Peace Officers and Montana County Attorney's Association, support HB 54. He described an example of a man who installed a device on a woman's car in order to follow her. He stated this bill would assist in the prosecution of stalking cases.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked Ms. Bovingdon, about forwarding an email he received but did not solicit. **Ms. Bovingdon** stated the jury would determine motivation. **REP. HARRIS** questioned whether this bill was overly broad. **Ms. Bovingdon** responded that email communications could be prosecuted. **REP. CLARK** asked **REP. NEWMAN** a similar question about forwarding an email. **REP. NEWMAN** stated that it is a technical possibility to be prosecuted for forwarding illegal emails, solicited or not, under this bill.

REP. STOKER asked Jim Smith if he would add Global Positioning System (GPS). **Mr. Smith** replied that a GPS would fall under the bill and need not be included specifically.

Closing by Sponsor:

REP. NEWMAN closed on HB 54, stating it does not change the elements of the four enumerated offenses or diminish the defendant's right to due process. He stressed that this bill sets forth some venue concerns about where the case can be prosecuted. He stated that the prosecution needs to keep up with those who utilize technology to commit offenses.

{Tape: 1; Side: A; Approx. Time Counter: 407 - 463}

HEARING ON HB 61

Sponsor: **REP. JEFF LASLOVICH, HD 57, Anaconda**

Opening Statement by Sponsor:

REP. LASZLOVICH opened on HB 61, stating this bill provides that a person under 21 may not be arrested or charged with possession or consumption of alcohol solely because the person was at a place where others were using or possessing it. He believes this bill would make criminals out of innocent individuals who are not

MISSOULA COUNTY

FRED VAN VALKENBURG
COUNTY ATTORNEY
SUZY BOYLAN-MOORE
DEPUTY COUNTY ATTORNEY
200 W. BROADWAY
MISSOULA, MONTANA 59802-4292

(406) 523-4737
FAX # (406) 523-4915

EXHIBIT 1
DATE 1/13/03
HB 54

January 10, 2003

Rep. Brad Newman
C/O Coalition on Domestic Violence
Fax # 406/443-7818

On behalf of the criminal attorneys at the Missoula County Attorney's Office, I am writing in support of House Bill 54. Including computers and other electronic devices in our criminal statutes as potential instruments of crime is very much needed. To leave the statutes as they are would ignore the important technological advances that have enabled criminal offenders to find new and more frightening ways to commit their crimes. We are extremely fortunate to have this opportunity to update our statutes before experiencing a deluge of electronic crime. We urge the Legislature to make these important changes to our criminal statutes.

Sincerely,

Suzy Boylan-Moore
Deputy County Attorney

YELLOWSTONE COUNTY ATTORNEY
217 North 27th Street
P.O. Box 35025
Billings, MT 59107-5025
(406) 256-2870
(406) 256-6931 - Fax

EXHIBIT 2
DATE 1/13
HB 54

January 10, 2003

Attention: Chairman James Shockley
Re: HB 54 (Introduced by House Representative Brad Newman)

Good-day Chairman Shockley:

We write in support of House Bill 54, carried by Representative Newman, and currently before your committee. HB 54 recognizes the urgency of updating prohibited conduct in the Montana Criminal Code to keep pace with the various ways offenders are harassing, threatening and intimidating our victims.

Yellowstone County has experienced a significant increase in crime involving the use of computers by offenders, which has followed the national trend since the introduction of the internet and e-mail. Very typically now, our stalking and privacy in communications victims are victimized by means of electronic communication.

We urge your support of this well-crafted bill by Representative Newman. Our citizens deserve complete and updated protection from offenders.

Very Truly Yours,

Margaret B. Gallagher

Margaret Gallagher,
Deputy Yellowstone County Attorney

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 17, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)

Members Excused: Rep. Bill Thomas (R)
Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	208, 1/8/2003; 209,1/8/2003; 210, 1/8/2003; 211, 1/8/03; 212, 1/8/03
Executive Action:	HB 52; HB 208; HB 54; HB 156

Discussion:

Committee discussed what a reasonable time would be.

Vote: Motion carried unanimously 14-0 voice vote.

EXECUTIVE ACTION ON HB 54

Motion: **REP. NEWMAN** moved that **HB 54 DO PASS.**

Discussion:

REP. NEWMAN stated that this bill was heard a couple days ago and that it would add electronic communications to four existing crimes in the code. He emphasized it would not change or expand the existing crimes.

Motion/Vote: **REP. NOENNIG** moved that **HB 54 BE AMENDED.** (NOENNIG Amendment.) **Motion** to amend **failed 7-10 roll call vote with REPS. CLARK, SALES, LANGE, FACEY, HARRIS, NOENNIG, AND NEWMAN voting yes.**

Motion: **REP. NEWMAN** moved that **HB 54 BE FURTHER AMENDED.** (NEWMAN AMENDMENT)

Discussion:

The Committee discussed amending the language in HB 54. John McMaster discussed and proposed the amending language. **REP. NEWMAN** suggested that page 6, line 6 be amended.

Vote: **Motion** to Amend **(Newman amendment) carried unanimously 14-0 voice vote.**

Motion/Vote: **REP. NOENNIG** moved that **HB 54 DO PASS AS AMENDED. Motion carried unanimously 14-0 voice vote.**

{Tape: 2; Side: B; Approx. Time Counter: 158 - 343}

EXECUTIVE ACTION ON HB 156

Motion: **REP. RASER** moved that **HB 156 DO PASS.**

Motion: **REP. RASER** moved that **HB 156 be amended.**

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on February 3, 2003 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	HB 53, 1/29/2003; HB 54, 1/29/2003; SB 283, 1/29/2003
Executive Action:	HB 53, SB 274, HB 15, SB 263, HB 54

County, **EXHIBIT(jus23a03)**; and Judy Wang, Assistant Missoula City Attorney, **EXHIBIT(jus23a04)**.

Ellen Donahue, Director of the Safe Space Domestic Violence and Sexual Assault Program, rose in support of HB 53. In the last 13 or 14 years she has been asked daily how a victim can be kept safe. House Bill 53 is a component to answer the question. Partner and family member assault and stocking is a pattern crime and not a one-time occurrence. When the accuser is released from jail, they are looking for a particular person and will find that person. Immediate notification to the victim gives the victim options on whether or not to go to a shelter, get an order of protection, change the locks on their doors, etc. These crimes are crimes of power and control. Power and control needs to be given back to the victims.

Beda Lovett, Friendship Center Board of Directors and Crisis Line Advocate, remarked HB 53 addresses a small matter but it is important to do whatever we can to give the best possible protections to victims of domestic violence.

Jim Smith, Montana Sheriffs and Peace Officers Assoc., rose in support of HB 53. Sheriffs offices handle the detention centers around the state. This bill will add workload to those offices but they are willing to accept that workload to help improve services to victims. On page 2, (3), the language is discretionary but does require them to make reasonable attempts to notify.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked if the detention centers would have a copy of the order so they would know who to notify. **REP. NEWMAN** affirmed when bail was set the information would be communicated to the detention center. When a victim has contact with the investigating officers and the court system, contact information is provided.

Closing by Sponsor:

REP. NEWMAN closed on HB 53.

HEARING ON HB 54

Sponsor: **REP. BRAD NEWMAN, HD 38, BUTTE**

Proponents: **Ali Bovingdon, Assistant Attorney General, Department of Justice**
Beth Satre, Public Policy Specialist for the Montana Coalition Against Domestic and Sexual Violence
Jim Smith, Montana Sheriffs and Peace Officers Assoc., and Montana County Attorneys Assoc.

Opponents: **None**

Opening Statement by Sponsor:

REP. BRAD NEWMAN, HD 38, BUTTE, introduced HB 54. He commented that criminals have computers and it is necessary for the state to keep up with this technology. This bill adds the phrase "electronic communication" to the means by which various criminal offenses may be committed. The crimes specific to HB 54 include stalking, child pornography, defamation, and privacy in communications. If a stalker resides in a different state and sends a series of harassing, intimidating, or threatening e-mails to the subject of the stalking, this could be prosecuted under the law. The bill also provides for the proper venue for the prosecutions. Venue would be proper either in the county of origin or in the county of receipt.

Proponents' Testimony:

Ali Bovingdon, Assistant Attorney General, Department of Justice, rose in support of HB 54. This bill would bring those criminal offenses which include an element of communication or transmittal of information up-to-date with the methods of communication available today.

Beth Satre, Public Policy Specialist for the Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 54 and provided written testimony from **Marty Lambert, Chief Deputy Gallatin County Attorney, EXHIBIT(jus23a05)**; and **Judy Wang, Missoula Assistant City Attorney, EXHIBIT(jus23a06)**.

Jim Smith, Montana Sheriffs and Peace Officers Assoc., and Montana County Attorneys Assoc., rose in support of HB 54.

{Tape: 1; Side: B}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. MCGEE asked for an explanation of "harassing" e-mails or faxes. **REP. NEWMAN** clarified the statutory language is in case law. This would include repeat conduct that serves no purpose other than to harass or bother the recipient. The language would be short of threatening words and may include they know the person has changed jobs, they know where they are working, and/or they have been watching the subject.

SEN. MANGAN remarked as technology evolved, it may be necessary to make the law more specific. This could include adding wireless or cellular phones. **REP. NEWMAN** maintained that it is necessary to protect the defendant's due process rights as well as explain the prohibited conduct. By not including electronic communications in the statutes, we run the risk of the defendant claiming the action was not expressly prohibited. If a communication or device has been left out, he would consider adding it.

SEN. O'NEIL noted that he had received 20 e-mails which were an advertisement and were all the same. This was harassing, it was sent by computer, and included more than one incident. He questioned whether these e-mails would qualify for stalking under the bill. **REP. NEWMAN** explained when they are notified a person believes they are being stalked or harassed, they mandate the victim, prosecutor, or sheriff's office notify the communicator the conduct is unwanted and unwarranted. If it does not stop the sender will face action. An advertisement or a single e-mail would not fit under the definition of stalking in the statute. This bill adds one means of committing the offense.

SEN. CROMLEY remarked certain items were not listed to include: a pager, wireless message service, and infrared communication. He wondered whether or not the bill would work just as well without the amount of specificity included. He also questioned whether the word "telegraph" should be reinserted in Section 1. **REP. NEWMAN** explained the bill drafter was of the opinion the original proposal was not specific enough and suggested the language on page 6. The House Judiciary Committee was comfortable with specifically listing the means of communication. Current statute allows for prosecution for in-person, telephone or mail conduct or by other action, device, or method.

SEN. WHEAT asked whether consideration had been given to defining electronic communication in the definition section of the criminal code. **REP. NEWMAN** noted that they had not but this may be a different way to handle it. He was not opposed to the consideration.

SEN. O'NEIL suggested using the language, "transfer of communication by any method". This would pick up all methods. **REP. NEWMAN** claimed the intent was not to restrict the prosecution or the enforcement of victim's rights. The language, "other action, device, or method" remains in existing law. His intent is not to restrict the methods.

Closing by Sponsor:

REP. NEWMAN closed on HB 54.

HEARING ON SB 283

Sponsor: **SEN. MIKE WHEAT, SD 14, BOZEMAN**

Proponents: **Ken Kasting, Attorney**

Opponents: **None**

Opening Statement by Sponsor:

SEN. MIKE WHEAT, SD 14, BOZEMAN, introduced SB 283. He commented the bill cleared up a conflict in the venue statutes. It also addressed agreements reached in mediation involving family law. The dissolution venue statute, 25-2-118, states the proper place to file a dissolution action is the county where the petitioner resides 90 days preceding the filing of the action. The dissolution jurisdiction statute, 40-4-104, states the jurisdiction of dissolution action is satisfied if one of the parties is domiciled in the state for 90 days preceding the making of the findings. One statute states preceding the filing of the action and the other statute states preceding the making of the findings.

{Tape: 2; Side: A}

This bill makes 25-2-118 consistent with 40-4-104. It would require a person contemplating a divorce action to have resided in Montana and in a particular county for 90 days before an action is filed.

In 40-4-302, a mediator is allowed to exclude a party's lawyer from the mediation sessions. Section 40-4-305, provides an agreement reached in mediation may not be submitted to the court if either party objects. The proposed legislation would allow the parties full access to their attorneys throughout the mediation process and allow attorneys to be present with clients at all times during the mediation process. Either party would be allowed to submit to the court a signed agreement, reached in

did things for her that put her in physical pain. The definition of physical pain is too vague.

Vote: Motion carried 7-2 with MANGAN and WHEAT voting no.

EXECUTIVE ACTION ON SB 263

Motion: SEN. WHEAT moved that SB 263 DO PASS.

Discussion:

CHAIRMAN GRIMES proposed a conceptual amendment to address an older child. He requested more time to develop this amendment.

SEN. CURTISS requested that additional weight be given the testimony of the investigating officer. This would be the best way to determine what actually took place.

SEN. WHEAT withdrew his motion.

{Tape: 3; Side: A}

EXECUTIVE ACTION ON HB 54

SEN. WHEAT suggested using a definition in the definition section of the criminal code which addressed electronic communication rather than placing it into various statutes.

MS. LANE raised a concern in regard to drafting an amendment addressing electronic communication that would include wireless communication, cable, fiber optics, etc. She further added the definition section being addressed is a long section. It would be necessary to amend any other sections that might refer to a subsection of that section.

SEN. O'NEIL suggested changing the language to "any method of contacting the alleged or stalked person".

ADJOURNMENT

Adjournment: 11:45 A.M.

SEN. DUANE GRIMES, Chairman

JUDY KEINTZ, Secretary

DG/JK

EXHIBIT(jus23aad)

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 24, 2003 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan (D)
Sen. Gerald Pease (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 340, HB 358, HB 389, 3/20/2003
Executive Action: HB 389, HB 197, HB 54 , HB 340

person has a DUI or a revoked license and the person loans his or her car with that knowledge, that car should also be taken away.

CHAIRMAN GRIMES suggested that the amendment be drafted for the floor.

Ms. Lane believed the amendment would be outside of the scope of the bill which deals with driver's licenses. The amendment would involve seizure and forfeiture of a vehicle.

CHAIRMAN GRIMES further suggested that SB 37 be reviewed following its passage by the House. The bill will be brought back to the Senate and probably will be in a conference committee. This would be a good place for the amendment to be placed on the bill.

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON HB 54

Motion: **SEN. WHEAT** moved that **HB 54 BE CONCURRED IN.**

SEN. WHEAT recalled **REP. NEWMAN'S** primary concern was to include within the stalking statute any type of electronic communication by computers, video cameras, fax machines, etc. The Committee focused on electronic communication and tried to develop a definition so that all various means of communicating would need to be included in the bill.

Substitute Motion: **SEN. WHEAT** moved that **HB 54 AMENDED, HB005402.avl, EXHIBIT(jus62a05).**

SEN. WHEAT explained Instruction No. 13 of the amendment contained the definition: "(4) 'Electronic communication' means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system."

Ms. Lane added the definition was from the Federal Privacy in Communications Act.

SEN. WHEAT further noted all the amendments would refer to an electronic communication that would be defined elsewhere in the statute.

SEN. O'NEIL suggested simply changing line 17 on page 1 to read, "(b) harassing, threatening, or intimidating the stalked person, in person or by any other method of contacting the victim."

SEN. WHEAT remarked that the reason for the bill was to address those items that can now be used to communicate. He favored **REP. NEWMAN's** request to amend the bill because he is a seasoned prosecutor who has had problems with the crimes being charged.

Vote: The motion carried unanimously.

Motion/Vote: **SEN. WHEAT** moved that **HB 54 BE CONCURRED IN AS AMENDED. The motion carried unanimously.**

EXECUTIVE ACTION ON HB 340

Motion: **SEN. MCGEE** moved that **HB 340 BE CONCURRED IN.**

Discussion:

Ms. Lane responded to **SEN. O'NEIL's** concerns expressed during the hearing in regard to page 2, lines 5 and 6. The language in question was "and if there is no personal representative authorized to do so". During the drafting stage **REP. NOENNING** requested the phrase be placed in the bill.

SEN. O'NEIL saw a problem with the court order not being any good due to the fact that there may be a personal representative. The court order should be final.

Ms. Lane suggested deleting the word "and". This would read: "upon an order of the court, if there is no personal representative authorized to do so".

SEN. O'NEIL agreed with the language.

SEN. WHEAT noted a personal representative would be appointed by order of the court. It would be necessary to establish that the person is qualified to act as a personal representative. He questioned removing the language "upon an order of the court and". The language would state: "Upon the death of a guardian's ward, the guardian, if there is no personal representative authorized to do so". The fact that there is a personal representative indicates the court has established and issued an order to that personal representative.

SEN. CROMLEY believed it would be important for the guardian to receive the approval of the court. This would clarify the concern that the court, before it grants the order, will ask if a personal representative has been appointed.

Amendments to House Bill No. 54
3rd Reading Copy

Requested by Senator Mike Wheat

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 24, 2003 (8:01am)

1. Title, line 6 through line 7.
Following: "USE OF" on line 6
Strike: remainder of line 6 through "DEVICES" on line 7
Insert: "ELECTRONIC COMMUNICATIONS; DEFINING "ELECTRONIC COMMUNICATION""

2. Page 1, line 17.
Following: "~~phone~~"
Strike: "telephone, by"

3. Page 1, line 18.
Strike: "by any type of"
Following: "communication,"
Strike: "including but not limited to a computer, videorecorder, or fax machine"
Insert: "as defined in 45-8-213"

4. Page 1, line 19.
Following: "or"
Strike: "by"
Insert: "any"

5. Page 2, line 19 through line 20.
Following: "use of" on line 19
Strike: remainder of line 19 through "device" on line 20
Insert: "electronic communication, as defined in 45-8-213"

6. Page 2, line 21 through line 22.
Following: "use of" on line 21
Strike: remainder of line 21 through "device" on line 22
Insert: "electronic communication, as defined in 45-8-213"

7. Page 2, line 26 through line 27.
Following: "use of" on line 26
Strike: remainder of line 26 through "device" on line 27
Insert: "electronic communication, as defined in 45-8-213"

SENATE JUDICIARY
Exhibit No. 5
Date 3-24-03
Bill No. HB54

HB005402.avl

"(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from ~~the previous licensing jurisdiction~~ each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium. ~~When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.~~"

(4) If Senate Bill No. 13 and [this act] are both passed and approved, then [section 1 of Senate Bill No. 13], amending 61-5-205, is void.

(5) If Senate Bill No. 37 and [this act] are both passed and approved, then subsection (3) of 61-5-205 in [this act] must read as follows:

"(3) Except as provided in 61-5-208(3)(c), a revocation under subsection (1) of this section must be for a period of 1 year."

(6) If Senate Bill No. 37 and [this act] are both passed and approved, then 61-5-208 must read as follows:

Insert: "Section 4. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required ~~on second or subsequent offense~~. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways ~~for a period of more than 1 year~~, except as ~~otherwise~~ permitted by law.

(2) ~~(a)~~ Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

~~(b)~~(3) ~~When~~ If the department receives a report from a court or another licensing jurisdiction that a person ~~is~~ has been convicted or ~~forfeits~~ has forfeited bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall~~, upon receiving a report of conviction or forfeiture of bail or collateral not vacated,~~:

(a) upon a first conviction, suspend the driver's license or driving privilege of the person for a period of 6 months. ~~Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon~~ Upon issuance of any restricted probationary license during the period of ~~revocation~~ suspension, the department shall restrict the person to driving only a motor vehicle equipped with

8. Page 3, line 18.
Following: "including by"
Strike: "telephone or by a computer, videorecorder, fax machine, or other electronic device"
Insert: "electronic communication, as defined in 45-8-213,"

9. Page 4, line 9 through 10.
Following: "~~mail~~" on line 9
Strike: remainder of line 9 through "device" on line 10
Insert: "electronic communication"

10. Page 4, line 14 through line 15.
Following: "uses" on line 14
Strike: remainder of line 14 through "device" on line 15
Insert: "an electronic communication"

11. Page 4, line 25 through page 5, line 16.
Strike: page 4, line 25 through page 5, line 16 in their entirety
Renumber: subsequent subsections

12. Page 5, line 18.
Following: "intercepts"
Strike: "a telephonic or cellular telephone voice or data"
Insert: "an electronic"

13. Page 5, line 27.
Following: line 26
Insert: "(4) "Electronic communication" means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system."

14. Page 6, line 4 through line 6.
Strike: "(a)" on line 4
Following: "involves" on line 4
Strike: remainder of line 4 through "medium" on line 6
Insert: "an electronic communication"

15. Page 6, line 6 through line 10.
Following: "in" on line 6
Strike: ":" on line 6 through "sent" on line 10
Insert: "the county in or from which the electronic communication was sent or in the county in which the electronic communication was received or to which it was sent"

16. Page 6, line 11 through line 17.
Strike: subsection (b) in its entirety

~~driver's~~ license to a person whose license ~~suspension~~ has been ~~reinstated~~ suspended because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)~~(7) (a) ~~The~~ Except as provided in subsection (7)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)~~(8) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.""

- END -

Ex 4

2003 Montana Legislature

About Bill -- Links

HOUSE BILL NO. 54
INTRODUCED BY NEWMAN

AN ACT REVISING THE CRIMINAL LAWS RELATING TO STALKING, CHILD PORNOGRAPHY, DEFAMATION, AND PRIVACY IN COMMUNICATIONS TO INCLUDE ACTS INVOLVING THE USE OF ELECTRONIC COMMUNICATIONS; DEFINING "ELECTRONIC COMMUNICATION"; CHANGING THE VENUE FOR SOME OF THOSE CRIMES; AND AMENDING SECTIONS 45-5-220, 45-5-625, 45-8-212, 45-8-213, AND 46-3-112, MCA.

AN ACT REVISING THE CRIMINAL LAWS RELATING TO STALKING, CHILD PORNOGRAPHY, DEFAMATION, AND PRIVACY IN COMMUNICATIONS TO INCLUDE ACTS INVOLVING THE USE OF ELECTRONIC COMMUNICATIONS; DEFINING "ELECTRONIC COMMUNICATION"; CHANGING THE VENUE FOR SOME OF THOSE CRIMES; AND AMENDING SECTIONS 45-5-220, 45-5-625, 45-8-212, 45-8-213, AND 46-3-112, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-220, MCA, is amended to read:

"45-5-220. Stalking -- exemption -- penalty. (1) A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by ~~phone, by~~ mail, electronic communication, as defined in 45-8-213, or ~~by~~ any other action, device, or method.

(2) This section does not apply to a constitutionally protected activity.

(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed $1,000, or both. For a second or subsequent offense or for a

first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed $10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person."

Section 2. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which children are engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which children are engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections."

Section 3. Section 45-8-212, MCA, is amended to read:

"45-8-212. Criminal defamation. (1) Defamatory matter is anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to the person's or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means, including by electronic communication, as defined in 45-8-213, communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter

of the communication and is made with the purpose to further the interest or duty.

(4) A person may not be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty or nolo contendere."

Section 4. Section 45-8-213, MCA, is amended to read:

"45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by ~~telephone or electronic mail~~ electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses ~~a telephone or electronic mail~~ an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated ~~telephone calls or electronic mailings~~ communications the peace, quiet, or right of privacy of a person at the place where the ~~telephone call or calls or electronic mailings~~ communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings; or

(iii) persons given warning of the transcription or recording.

~~(d) by means of any machine, instrument, or contrivance or in any other manner:~~

~~(i) reads or attempts to read a message or learn the contents of a message while it is being sent over a telegraph line or by electronic mail;~~

~~(ii) learns or attempts to learn the contents of a message while it is in a telegraph office or is being received at or sent from a telegraph office; or~~

~~(iii) uses, attempts to use, or communicates to others any information obtained as provided in this subsection (1)(d);~~

~~(e) discloses the contents of a telegraphic message, electronic mail, or any part of a telegraphic message or~~

~~electronic mail addressed to another person without the permission of the person, unless directed to do so by the lawful order of a court; or~~

~~(f) opens or reads or causes to be read any sealed letter or electronic mail not addressed to the person opening the letter or reading the electronic mail without being authorized to do so by either the writer of the letter, the sender of the electronic mail, or the person to whom the letter or electronic mail is addressed or, without the like authority, publishes any of the contents of the letter or electronic mail knowing the letter or electronic mail to have been unlawfully opened.~~

~~(2) Subsection (1) does not apply to an employer or a representative of an employer who opens or reads, causes to be opened or read, or further publishes an electronic mail or other message that either originates at or is received by a computer or computer system that is owned, leased, or operated by or for the employer.~~

~~(3)~~(2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts ~~a telephonic voice or data~~ an electronic communication. This subsection does not apply to elected or appointed public officials or employees when the interception is done in the performance of official duty or to persons given warning of the interception.

~~(4)~~(3) (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed $1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $10,000, or both.

(4) "Electronic communication" means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system."

Section 5. Section 46-3-112, MCA, is amended to read:

"46-3-112. Requisite act in multiple counties. (1) Except as provided in 46-3-110(2), if two or more acts are requisite to the commission of an offense or if two or more acts are committed in furtherance of a common scheme, the charge may be filed in any county in which any of the acts or offenses occurred.

(2) Except as provided in 46-3-110(2), if an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued.

(3) If an element of an offense under 45-5-220, 45-5-625, 45-8-212, or 45-8-213 involves an electronic communication, the charge may be filed in the county in or from which the electronic communication was sent or

in the county in which the electronic communication was received or to which it was sent."

- END -

Latest Version of HB 54 *(HB0054.ENR)*

Processed for the Web on April 9, 2003 (2:43pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the status of this bill for the bill's primary sponsor.

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